

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

*Plaintiff,*

v.

Case No. 2:19-CR-00099

CHRISTOPHER GARDNER,

*Defendant.*

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**DEFENDANT'S RESPONSE TO GOVERNMENT'S OBJECTIONS TO  
MAGISTRATE JUDGE'S RECOMMENDATION AND ORDER DENYING HIS  
MOTION TO SUPPRESS OUT-OF-COURT AND IN-COURT  
IDENTIFICATION OF DEFENDANT BY WILLIAM BROWN**

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Defendant Christopher Gardner, by his counsel, Jason D. Luczak and Nicole M. Masnica of Gimbel, Reilly, Guerin & Brown LLP, hereby responds to the Government's objection (Doc. 45) to the Report and Recommendation of United States Magistrate Judge Nancy Joseph, which recommends the denial of Gardner's motion to suppress Brown's out-of-court identification of Gardner, and denial of Gardner's request for an evidentiary hearing. (Doc. 41).

The government's objection underscores the need to have an evidentiary hearing on this issue. The defense was not attempting to give any misimpression related to the timing of the contents of the INTERPOL red notice. Rather, the defense pointed to those pictures included in the red notice to rebut the Special Agent's conclusory statements in his supporting affidavit that made it seem like the only picture available to the

government was the one used in the show-up. Just because the red notice was dated September 24, 2019, does not mean that those photographs would not have been accessible at the time of the show-up.

There was absolutely no reason given by the government why it could not or did not search for other photos that could have been used to perform a photo array. The discovery is vast in this case and the amount of information that the government had on Gardner at the time of the show-up makes its claim that that was the only photograph of Gardner that they could use suspect.

For all of the reasons stated herein, and the arguments and evidence made in previous filings, Gardner requests that the Court reject the Report and Recommendation (Doc. 41) and order an evidentiary hearing to fully consider whether the unduly suggestive identification was not otherwise reliable.

Dated this 26th day of April, 2023.

Respectfully submitted,

GIMBEL, REILLY, GUERIN & BROWN LLP

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